

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zev Carter	Team: Squad #3	CCRB Case #: 201901213	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/03/2019 6:43 PM	Location of Incident: [REDACTED]	Precinct: 122	18 Mo. SOL 7/3/2020	EO SOL 2/17/2021	
Date/Time CV Reported Fri, 02/08/2019 7:04 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 02/08/2019 7:04 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Tomarchio	12090	917015	HWY 05

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Perry	12067	949475	HWY 05
2. POM Jason Santana	27987	939417	HWY 05
3. POM Adam May	00013	953072	HWY 05

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Tomarchio	Force: Police Officer Anthony Tomarchio pointed his gun at § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Anthony Tomarchio	Force: Police Officer Anthony Tomarchio pointed his gun at § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]

## Case Summary

On February 8, 2019, § 87(2)(b) filed this complaint with the CCRB using the CCRB's online complaint submission form on behalf of himself and his friend § 87(2)(b).

On January 3, 2019, at approximately 6:43 p.m., § 87(2)(b) was driving westbound on I-278 in Staten Island when he came upon Police Officers Anthony Tomarchio, Jason Santana, Richard Perry, and Adam May of Highway District 5, who were conducting High Occupancy Vehicle (HOV) lane enforcement near Neckar Avenue. § 87(2)(b) made multiple moving violations and rear-ended another motorist's vehicle. PO Tomarchio pointed his gun at § 87(2)(b) (**Allegations A and B: Force**, § 87(2)(g)). PO Perry issued § 87(2)(b) summons #§ 87(2)(b) for disobeying pavement markings, #B19C002078 for disobeying HOV lane markings, and #§ 87(2)(b) for having a nontransparent front windshield. § 87(4-b), § 87(2)(g)

PO Tomarchio has since been transferred to Brooklyn Gang South.

This case contains cell phone video footage from § 87(2)(b) and dash camera footage from PO Perry's vehicle (**01, 02, 21 Board Review**).

## Findings and Recommendations

**Allegation (A) Force: Police Officer Anthony Tomarchio pointed his gun at § 87(2)(b)**

**Allegation (B) Force: Police Officer Anthony Tomarchio pointed his gun at § 87(2)(b)**

§ 87(2)(b) stated that on January 3, 2019, at approximately 6:00 p.m., he was driving westbound on I-278 in Staten Island with his friend § 87(2)(b) (**03 Board Review**). He was driving in the left-most lane, which became the HOV lane. § 87(2)(b) continued to drive in the HOV lane until traffic came to a standstill. § 87(2)(b) saw several marked police cars six car lengths ahead of him and assumed that there had been a traffic accident. § 87(2)(b) drove to the right, exiting the HOV lane, and switched lanes to the right once more. § 87(2)(b) was now driving behind a vehicle that was traveling in the same direction as he was. PO Tomarchio approached § 87(2)(b)'s car from near the stopped police vehicles, ran into the middle of the road with his gun drawn, and ordered the car in front of § 87(2)(b) to stop. The car in front of § 87(2)(b) stopped short and § 87(2)(b) drove into it. PO Tomarchio walked with five to ten feet of § 87(2)(b)'s car, and pointed his firearm at § 87(2)(b) and § 87(2)(b). PO Tomarchio ordered § 87(2)(b) and the driver in front of him to park their cars in the left shoulder of the expressway. PO Perry approached § 87(2)(b)'s parked vehicle, requested his information, and issued him the summonses.

§ 87(2)(b) stated that he was riding in the front passenger seat of § 87(2)(b)'s car as § 87(2)(b) drove at 50-60 miles per hour down the highway (**17 Board Review**). § 87(2)(b) "might have" driven into the left lane from the HOV lane as he rounded a curve. PO Tomarchio, who was originally standing on the pavement markings in between the HOV lane and the leftmost lane, "jumped" into the left lane, where § 87(2)(b) was driving. PO Tomarchio pulled his gun out of its holster and pointed it at § 87(2)(b)'s car. Before this point, no officer had attempted to stop § 87(2)(b). § 87(2)(b) stated that the car driving ahead of § 87(2)(b) stopped short in front of him in reaction to PO Tomarchio. § 87(2)(b) drove into the right lane to avoid PO Tomarchio, but rear-ended the vehicle in front of him nevertheless. § 87(2)(b) did not drive away from the spot where he hit the other vehicle. An officer instructed § 87(2)(b) to park his car on the highway shoulder and said that § 87(2)(b) had attempted to flee from the officers. PO Tomarchio accused § 87(2)(b) of almost hitting him.

In his statement to the CCRB, PO Tomarchio explained that there are signs posted on the roadway ordering drivers not to cross the divider between the HOV and regular lanes (**04 Board Review**). PO Tomarchio stated that he noticed PO Perry waving and pointing as he attempted to stop § 87(2)(b) who was driving approximately 50 miles per hour. § 87(2)(b) evaded PO Perry in this manner and continued to move into the middle lane and evaded PO Santana, who yelled, “Tony, watch out!” § 87(2)(b) moved another time into the right lane and struck another vehicle. § 87(2)(b) was five to six car lengths away from PO Tomarchio. § 87(2)(b) then put his vehicle in reverse and attempted to maneuver around the vehicle that he struck. In doing so, he nearly missed PO Santana. § 87(2)(b) revved his motor and drove directly at PO Tomarchio, who noticed that § 87(2)(b)'s windshield was tinted black. PO Tomarchio could not see inside of the vehicle. PO Tomarchio drew his gun and pointed it at § 87(2)(b) to stop him. § 87(2)(b) stopped his vehicle and PO Tomarchio put his gun away. Other officers rushed to the scene and ordered § 87(2)(b) to pull over to a safe area of the roadway. PO Tomarchio had no further interactions with § 87(2)(b).

PO Perry stated that he first noticed § 87(2)(b) when he was four car lengths away from him in the HOV lane (**06 Board Review**). § 87(2)(b) pulled out of the HOV lane and drove away. PO Santana was standing on the double white lines that separate HOV lanes from non-HOV lanes. In PO Perry's experience, this almost always happens when there is someone in the HOV lane without three passengers (a moving violation) who has just realized that officers were pulling people over. In doing so, § 87(2)(b) also crossed a double white line on the pavement, which is also a moving violation. PO Perry stopped traffic in the leftmost non-HOV lane. § 87(2)(b) drove into the next lane and started to drive away. PO Tomarchio, who was standing in this lane, stopped traffic in the lane. § 87(2)(b) collided into a car in front of him. He proceeded to put his car in reverse and attempted to drive into the right lane of the highway. PO Tomarchio reacted by approaching § 87(2)(b)'s car with his gun pointed at it. PO Perry ordered both § 87(2)(b) and the driver of the car he had hit to pull over to the side of the road.

PO Santana had no recollection of this incident (**07 Board Review**).

§ 87(2)(b) provided several photos which depict the level of congestion along I-278 during the incident and show officers conducting their duties on foot in traffic (**08-10 Board Review**). The damages done to § 87(2)(b)'s front bumper can be seen in **11** and **12 Board Review**. § 87(2)(b)'s video footage in **01 Board Review** depicts the speed of traffic around the time of the incident.

PO Perry's dash camera footage shows PO Perry approaching § 87(2)(b)'s vehicle and issuing summonses to § 87(2)(b) (**21 Board Review**). The footage does not capture § 87(2)(b)'s moving violations or PO Tomarchio pointing his gun at § 87(2)(b)'s car.

NYPD Patrol Guide Procedure 221-01 states that “the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present” (**13 Board Review**).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (**14 Board Review**).
- PO Tomarchio has been a member of service for 25 years and has been a subject in two CCRB complaints and two allegations. Neither were substantiated. § 87(2)(g)

#### Mediation, Civil and Criminal Histories

- On June 6, 2019, this case was sent to the mediation unit. On August 14, 2019 the case was returned to the investigations unit after PO Tomarchio refused to mediate.
- As of April 26, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**15 Board Review**).
- According to the Office of Court Administration, neither § 87(2)(b) nor § 87(2)(b) have a history of convictions in New York City (**16, 20 Board Review**).

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date